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No. 234

In the Supreme Court of the United States

OCTOBER TERM, 1958

FEDERAL TRADE COMMISSION, PETITIONER

v.

MANDEL BROTHERS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	2
The invoicing violations	3
The labeling violations	5
Summary of argument	7
Argument:	
I. The prohibitions of the Fur Products Labeling Act against false and deceptive invoicing apply to retail sales	11
A. The statutory definition of "invoice" covers invoicing to retail consumers	13
B. The legislative history of the Fur Products Labeling Act reflects a Congressional purpose to protect consumers from false and deceptive invoicing of fur products at the retail level	16
C. The settled administrative construction of the Act is that its invoicing provisions apply to retail sales	24
II. The Commission, upon finding that respondent had failed to include on its labels three of the six categories of information required by the Act, properly directed inclusion of all six categories	27
Conclusion	35
Appendix A	36
Appendix B	40

CITATIONS

Cases:	
Alaska S. S. Co. v. *United States*, 290 U. S. 256	27
Black v. *Magnolia Liquor Co.*, 355 U. S. 24	24, 26
De Gorter v. *Federal Trade Commission*, 244 F. 2d 270	22
Federal Housing Adm'n v. *The Darlington, Inc.*, 358 U. S. 84	10, 26

Cases—Continued

	Page
Federal Trade Commission v. *Martin Berdy*, S. D. N. Y., Civil Action 122–366	32
Federal Trade Commission v. *Fairfield Wool Co.*, D. Conn., Civil Action 7422	32
Federal Trade Commission v. *Fibre Enterprises, Inc.*, S. D. N. Y., Civil Action 136–243	32
Federal Trade Commission v. *Gratz*, 253 U. S. 421	34
Federal Trade Commission v. *Kulin Waste Co.*, D. Mass., Civil Action 57–707–W	32
Federal Trade Commission v. *Morton Salt Company*, 334 U. S. 37	29
Federal Trade Commission v. *Ruberoid Company*, 343 U. S. 470	29, 32
Federal Trade Commission v. *South Village Mills*, D. Mass., Civil Action 58–566–M	32
Flemming v. *Florida Citrus Exchange*, No. 27, this Term, decided Dec. 15, 1958, slip op., p. 10	9, 14, 22
Ed Hamilton Furs, Inc., 51 F.T.C. 186	25
International Salt Company v. *United States*, 332 U. S. 392	32
Jacob Siegel Company v. *Federal Trade Commission*, 327 U. S. 608	10, 11, 29, 31
Knowlton v. *Moore*, 178 U. S. 41	14
Local 167, Int'l Brotherhood of Teamsters v. *United States*, 291 U. S. 293	31, 32
Magnolia Liquor Co. v. *Cooper*, 231 F. 2d 941	26
Maguire v. *Commissioner*, 313 U. S. 1	14
May Department Stores Company v. *National Labor Relations Board*, 326 U. S. 376	29, 32–33
National Labor Relations Board v. *Express Publishing Co.*, 312 U. S. 426	11, 29, 31, 33
O'Hara v. *Luckenbach S. S. Co.*, 269 U. S. 364	18
Puget Sound Elec. Ry. v. *Benson*, 253 Fed. 710	15
Shapiro v. *United States*, 335 U. S. 1	18
United States v. *American Trucking Ass'ns*, 310 U. S. 534	10, 25
United States v. *Bramblett*, 348 U. S. 503	14
United States v. *Hughes*, 116 F. 2d 613	15
United States v. *Sullivan*, 332 U. S. 689	12
United States v. *Union Pac. R. R.*, 91 U. S. 72	14
United States v. *Zucca*, 351 U. S. 91	25
White v. *United States*, 191 U. S. 545	14

Statutes:

Fur Products Labeling Act, 65 Stat. 175, 15 U. S. C. 69, *et seq*. Page 2, 7, 11, 16, 17, 27, 28, 33, 36
Section 2 (f), 15 U. S. C. 69 (f) 3, 8, 13, 14, 15, 23, 36
Section 3 (a), 15 U. S. C. 69a (a) 3, 10, 12, 23, 27, 36
Section 3 (b), 15 U. S. C. 69a (b) 3, 8, 10, 12, 23, 27, 36
Section 3 (c), 15 U. S. C. 69a (c) 37
Section 4, 15 U. S. C. 69b 5, 6, 10, 27, 30, 31, 33, 37
Section 5 (b), 15 U. S. C. 69c (b) 3, 23, 38
Section 7, 15 U. S. C. 69e 5, 33
Section 8 (1), 15 U. S. C. 69f 33
Wool Products Labeling Act, 15 U. S. C. 68, *et. seq*. 32, 34

Congressional material:

95 Cong. Rec. 9513–9514 20
95 Cong. Rec. 9517 16
97 Cong. Rec. 6695 22
97 Cong. Rec. 6701 17
97 Cong. Rec. 6879 17
97 Cong. Rec. 9004–9007 17
97 Cong. Rec. 9106 17
97 Cong. Rec. 10,366 17
Hearing on H. R. 3734 (House), 80th Cong., 2d sess. 18, 19
Hearings on H. R. 4292, 97 and 3755 (House), 81st Cong., 1st sess. 17, 18, 31
Hearings on H. R. 5187 (Senate), 81st Cong., 1st sess. 20
H. Rep. 2004, 80th Cong., 2d sess. 16, 19, 20
H. Rep. 919, 81st Cong., 1st sess. 16, 20
H. Rep. 546, 82d Cong., 1st sess. 17, 20, 22
H. Rep. 769, 82d Cong., 1st sess. 17
H. R. 3734, 80th Cong., 1st sess. 14, 16, 17
H. R. 3734 (Union Calendar No. 979), 80th Cong., 2d sess. 16, 19
H. R. 97, 81st Cong., 1st sess. 20
H. R. 3755, 81st Cong., 1st sess. 14, 20
H. R. 5187, 81st Cong., 1st sess. 16
H. R. 2321, 82d Cong., 1st sess. 16, 17
S. 1388, 80th Cong., 1st sess. 14
S. 508, 82d Cong., 1st sess. 16
S. Rep. 2378, 81st Cong., 2d sess. 16
S. Rep. 78, 82d Cong., 1st sess. 7–8, 9, 11, 17, 20, 21, 31

Miscellaneous:

	Page
Annual Reports of the Federal Trade Commission:	
1954	25
1957	25
Federal Trade Commission's "Rules and Regulations Under the Fur Products Labeling Act," 16 C. F. R. (Supp. 1958) Part 301:	
Rule 4	6
Rule 27	5
Rule 29 (a)	6
Rule 29 (b)	6
2 Sutherland, *Statutory Construction*, 448–449 (3d ed., 1943)	15

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OPINION BELOW

The opinion of the Court of Appeals (R. 67–72) is reported at 254 F. 2d 18.

JURISDICTION

The judgment of the Court of Appeals modifying the Commission's order, and affirming it as modified, was entered on April 1, 1958 (R. 72). The court's final decree, enforcing the order as modified, was entered on May 8, 1958 (R. 73–75). The time for filing a petition for a writ of certiorari was extended by Mr. Justice Clark on June 25, 1958, to July 30, 1958 (R. 76). The petition for a writ of certiorari was filed on July 30, 1958, and was granted on October

13, 1958 (R. 77). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether sales at the retail level are outside the scope of the provisions of the Fur Products Labeling Act prohibiting false and deceptive invoicing.

2. Whether the Federal Trade Commission, in issuing cease-and-desist orders against failure to label fur products properly, is confined to proscribing the precise labeling omissions which it found.

STATUTE INVOLVED

The relevant portions of the Fur Products Labeling Act, 65 Stat. 175, 15 U. S. C. 69, *et seq.*, are set forth in Appendix A, *infra*, pp. 36–39.

STATEMENT

On October 27, 1955, the Federal Trade Commission issued a complaint charging that respondent, which operates a large retail department store in Chicago, Illinois, had violated the Fur Products Labeling Act (R. 1–5). After full administrative proceedings, the Commission, adopting the examiner's findings (with minor modifications), issued its opinion (R. 31–45) holding that respondent had violated the Act as charged, and entered a cease-and-desist order (R. 28–31). The principal violations found were misbranding by failure to attach proper labels, false and deceptive invoicing, and false and deceptive advertising. The Court of Appeals modified the order in two important respects, and affirmed and enforced its other provisions (R. 67–72). The court eliminated

the prohibition against false and deceptive invoicing, on the ground that the Act does not extend to invoices given to retail customers; and it held that the prohibitions against misbranding were too broad.

THE INVOICING VIOLATIONS

Section 3 (a) of the Act (15 U. S. C. 69a (a)) makes it unlawful to sell "in [interstate] commerce * * * any fur product which is misbranded or falsely or deceptively advertised or invoiced * * *"; and Section 3 (b) (15 U. S. C. 69a (b)) makes it unlawful to sell "any fur product which is made in whole or in part of fur which has been shipped and received in [interstate] commerce, and which is misbranded or falsely or deceptively advertised or invoiced * * *." Section 5 (b) (15 U. S. C. 69c (b)) provides that a fur product or fur is falsely or deceptively invoiced if not invoiced to show (A) the name of the animal that produced the fur; where applicable, that the product (B) contains used fur, (C) contains bleached, dyed, or artificially colored fur, or (D) is composed in whole or substantial part of paws, tails, bellies, or waste fur; (E) the "name and address" of the person issuing such invoice; and (F) the country of origin of any imported furs. Section 2 (f) of the Act (15 U. S. C. 69 (f)) defines "invoice" as "a written account, memorandum * * * which is issued in connection with any commercial dealing in fur products or furs, and describes the particulars of any fur products or furs, transported or delivered to a purchaser, consignee * * *, or any other person who is engaged in dealing commercially in fur products or furs."

The Commission found that respondent had violated the invoicing provisions of the Act because its invoices did not show its address, and in several instances did not disclose that the fur was bleached, dyed, or otherwise artificially colored, and failed to set forth the correct name of the animal producing the fur (R. 35). The Commission rejected respondent's contention that the Act is not applicable to retail invoicing. It stated (R. 36–37) that "a prime purpose of the Act was to eliminate deceptive invoicing at the consumer level"; that it has "consistently construed the statute's proscriptions against false and deceptive invoicing to extend to invoices or sales slips furnished by retailers to the purchasing consumer"; and that respondent's contention would "render the Act ineffective in a major respect."

The Court of Appeals eliminated the prohibitions relating to invoicing, on the ground that under the statute a sales slip given to a retail customer is not an "invoice". The court ruled that an invoice "must be something issued in connection with a commercial dealing to a purchaser or any *other* person who is engaged in *dealing commercially*" in furs, and that, "[u]nder no circumstances is a sales slip given to a customer by the retailer * * * issued in connection with a commercial dealing" (R. 70). The court refused to consider the legislative history of the Act, on the ground that when statutory language is "clear and unambiguous its legislative history cannot control the interpretation * * *" (R. 71).

THE LABELING VIOLATIONS

Section 4 of the Act (15 U. S. C. 69b) provides that a fur product is misbranded (1) if it is "falsely or deceptively labeled * * * or identified," (2) if there is not affixed a label setting forth six specific items of information which (with one minor exception) are identical with those which Section 5 (b) requires an invoice to contain,[1] or (3) if the label designates the animal that produced the fur by some name other than that prescribed in the Fur Products Name Guide (a register of the names of hair, fleece and fur-bearing animals which Section 7 of the Act (15 U. S. C. 69e) requires the Commission to maintain). The "label" to which the Act refers, however, is not a label in the ordinary sense of a piece of cloth permanently affixed to the garment by sewing; it is merely a ticket or tag temporarily attached to the garment, apparently by tying (R. 47, 62–64, 64A, 66B; see Rule 27 of the Commission's Rules and Regulations under the Act, 16 C. F. R. (Supp. 1958) 301.27).

The Commission found the following violations of the Act's labeling requirements: 12 instances of failure to label the product with the correct name of the animal producing the fur (Section 4 (2) (A)), 15 instances of failure to disclose that the product was bleached, dyed or otherwise artificially colored (Section 4 (2) (C)), and 58 instances of failure to show the country of origin of imported furs (Section 4 (2)

[1] Section 4 (2) (E) requires the label to show the name of the person who manufactures the fur product, rather than the "name and address" of the person issuing the invoice.

(F)) (R. 12). The Commission further found 187 violations of its rules which provide additional labeling requirements and standards (R. 12).[2] The Commission held, however, that there was "no evidence that the labels affixed to respondent's fur products were deficient in that they failed to disclose that the fur products were composed of used fur [Section 4 (2) (B)], or were composed of paws, tails, bellies, or waste fur [Section 4 (2) (D)], or that they failed to disclose respondent's name [Section 4 (2) (E)] * * *" (R. 28).

Although the examiner recommended that the cease-and-desist order be limited to the three categories of information found to have been omitted (R. 26), the Commission's order directed respondent to cease and desist from "Misbranding fur products by: * * * Failing to affix labels to fur products showing" the six categories of information required by Section 4 (2) (R. 29). The Commission stated (R. 42–43) that "[u]nder the Act a fur product is misbranded * * * unless it has attached to it a label setting forth clearly and conspicuously all the data indicated as necessary to be included thereon by Section 4 (2)"; that the subsections "do not deal with separate violations in and of themselves" (*ibid.*); and that "in any case in which it is found that the

[2] In 9 instances, required information was improperly set forth in abbreviated form; in 59 instances, non-required information was mingled with required information; and in 119 instances, required information was set forth in handwriting (R. 12), in violation of Rules 4, 29 (a), and 29 (b), respectively, of the Commission's "Rules and Regulations Under the Fur Products Labeling Act," 16 C. F. R. (Supp. 1958) Part 301.

labeling * * * requirements * * * have not been fully complied with, the appropriate conclusion is that the fur products in connection with which the deficiencies have occurred have been misbranded * * * and that the appropriate order to be issued in correction of the offense is one requiring cessation of the practice, namely, the misbranding * * * by failure to attach proper labels * * *" (R. 43–44).[1]

The Court of Appeals struck from the order the prohibitions against the three categories as to which no violations were found. Although stating it accepted the "doctrine that a cease and desist order does not have to be limited to the illegal practice in the precise form it is found to exist or that those caught violating the Act must expect some fencing in," the court refused to "affirm an order requiring one to cease and desist from doing that which the Commission specifically found it did not do" (R. 69–70).

SUMMARY OF ARGUMENT

I

One of the purposes of the Fur Products Labeling Act was "[t]o protect consumers * * * against deception * * * resulting from the * * * false invoicing of fur products and furs" (S. Rep. 78, 82d Cong.,

[1] The Commission reached the same conclusion with respect to the scope of the order directed against invoicing violations. It enjoined respondent from failing to furnish invoices containing the six categories of information required by the Act (R. 30), even though it found (R. 28) that there was "no evidence" that three of those categories had been omitted from its invoices. Since the Court of Appeals held that the part of the order dealing with the invoicing violations was beyond the Commission's statutory authority, it did not reach the question of its scope.

1st sess., p. 1; see 65 Stat. 175). Section 3 (b), which prohibits the sale of any falsely or deceptively invoiced fur product made of fur which has been shipped in interstate commerce, on its face applies to retail sales. The Court of Appeals, however, solely on the basis of a narrow interpretation of the statutory definition of "invoice" and without considering either the purpose, legislative history or settled administrative interpretation of the Act, held the false invoicing prohibitions inapplicable to retail sales.

A. Section 2 (f) defines "invoice" as "a written account, memorandum, [etc.] * * * which is issued in connection with any commercial dealing in fur products or furs and describes the particulars of any fur products or furs, transported or delivered to a purchaser [etc.] * * * or any other person who is engaged in dealing commercially in fur products or furs." Giving these words their ordinary and usual meanings, the ultimate consumer who buys a fur garment from a retail dealer is a "purchaser," the sale to such "purchaser" is a "commercial dealing," and the sales memorandum issued in connection with the transaction is an "invoice". The Court of Appeals erred in holding that the last phrase of the definition, "who is engaged in dealing commercially in fur products or furs," modifies not only the immediately preceding words "any other person," but also the prior terms of the definition, including "purchaser."

B. In any event, the court below erred in holding that the definition of "invoice" is so "clear and unambiguous" as to preclude resort to legislative history.

This history shows that Congress intended to protect retail consumers of fur products from false and deceptive invoicing.

Representatives of the fur industry testified at the Congressional hearings that proper invoicing was necessary to protect the retail customer. They pointed out that the "label" on a fur product is merely a ticket or tag which the customer ordinarily does not preserve and that the invoice serves as a permanent record. Following this testimony, the false invoicing provisions of the bill were strengthened, and the present definition of "invoice" was added. The Senate Committee Report stated that one of the Act's purposes was "[t]o protect consumers * * * against deception * * * resulting from the * * * false invoicing of fur products and furs * * * " (S. Rep. 78, 82d Cong., 1st sess., p. 1), and the title of the Act reflects the same purpose. There is no "substantial contrary indication in the legislative history" (*Flemming* v. *Florida Citrus Exchange,* No. 27, this Term, decided December 15, 1958, slip op., p. 13) of any intent to exempt retail invoicing from the Act's prohibitions of false and deceptive practices; respondent's contention that the invoicing provisions of the Act were intended to apply only to furs, and not to fur products, is contrary to numerous specific provisions of the Act.

C. The Commission has consistently construed the false and deceptive invoicing provisions of the Act as applicable to retail sales. This interpretation, which recognizes that truthful retail invoicing is necessary if consumers of fur products are to enjoy the full protection which Congress intended the Act to give them

against deceptive practices, is "entitled to great weight." *United States* v. *American Trucking Ass'ns*, 310 U. S. 534, 549; *Federal Housing Adm'n* v. *The Darlington, Inc.*, 358 U. S. 84, 90.

II

The Court of Appeals also erred in modifying the scope of the Commission's order directed against respondent's misbranding violations. Section 3 of the Act forbids the sale of a "misbranded" fur product, and Section 4 declares that a fur product is "misbranded" if, *inter alia*, the label attached to it fails to set forth six specified categories of information. The Commission, upon finding that in numerous instances respondent had failed to include three categories of required information, but that there was "no evidence" that it had failed to furnish the three other categories, ordered respondent to cease and desist from "[m]isbranding fur products by * * * [f]ailing to affix labels" showing each of the six categories of information. The Court of Appeals struck from the order the prohibitions dealing with the three categories of information with respect to which the Commission held there was "no evidence" of violation.

We submit that the Commission did not abuse its "wide discretion in its choice of a remedy" (*Jacob Siegel Company* v. *Federal Trade Commission*, 327 U. S. 608, 611) in concluding that the "appropriate" order to correct the statutory offense of misbranding by omitting required information from labels "is one requiring cessation of the practice, namely, the misbranding * * * by failure to attach proper labels

* * *" (R. 43–44). The six subcategories of information which the Act requires a properly branded fur product to contain do not involve separate offenses; they are merely component elements of the single offense of misbranding. The subcategories are closely interrelated, and it is not unreasonable to assume that one who has omitted several of the categories is likely, unless restrained, to commit violations involving others. The Commission's broad discretion to select an appropriate remedy includes the power to proscribe "like or related unlawful acts" (*National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, 436); an order requiring respondent to furnish all six categories of information cannot be said to have "no reasonable relation to the unlawful practices found to exist" (*Siegel* case, *supra*, at 613). The decision below in effect limits the Commission to proscribing the precise violations found by it, and unduly limits its discretion to select an appropriate remedy.

ARGUMENT

I. THE PROHIBITIONS OF THE FUR PRODUCTS LABELING ACT AGAINST FALSE AND DECEPTIVE INVOICING APPLY TO RETAIL SALES

Congress enacted the Fur Products Labeling Act "[t]o protect [*inter alia*] consumers * * * against deception * * * resulting from the misbranding, false or deceptive advertising, or *false invoicing* of fur products and furs * * *" (S. Rep. 78, 82nd Cong., 1st sess., p. 1, emphasis added; see also the title of the Act, 65 Stat. 175). To provide such protection Congress, in addition to prohibiting various transactions in inter-

state commerce involving falsely or deceptively invoiced fur products (Section 3 (a)), further prohibited the "sale * * * of any fur product * * * which is * * * falsely or deceptively * * * invoiced," if such product is made in whole or in part of fur which has been shipped in interstate commerce (Sec. 3 (b)). On their face, these broad provisions would appear to make the false invoicing prohibitions applicable to all sales of fur products, including retail sales, over which the Commission has jurisdiction. Cf. *United States v. Sullivan*, 332 U. S. 689.

The Court of Appeals, however, relying solely upon a narrow reading of the statutory definition of "invoice" and without considering the basic policy of the legislation, its legislative history, or its settled administrative interpretation, concluded that the statutory prohibitions against false invoicing are not applicable to retail sales. We believe that this ruling is clearly erroneous, and that carving out such an exemption from the Act's prohibitory provisions would, as the Commission stated (R. 36–37), "defeat the congressional declaration of purpose and render the Act ineffective in a major respect."

We shall show that the language of the Act, properly construed, does cover false and deceptive invoicing at the retail level; that the legislative history reflects a Congressional purpose generally to protect consumers of fur products and furs from false and deceptive practices, and specifically to protect them against false invoicing; that denying retail consumers the protection of the statutory prohibitions against false invoicing would substantially limit the protec-

tion against misbranding which Congress provided for purchasers of fur products; and that the court below failed to give proper weight to the settled administrative construction of the Act by the agency charged with its enforcement.

A. The Statutory Definition of "Invoice" Covers Invoicing to Retail Consumers

In view of the legislative purpose to protect consumers against false invoicing of fur products (see *infra*, pp. 16–21), we doubt that the statutory definition of "invoice" can fairly be construed as limiting the reach of the Act's prohibitions against the sale of "any fur product * * * which is * * * falsely or deceptively * * * invoiced." But in any event we submit that, properly read, the definition does cover invoices at the retail level.

Section 2 (f) of the Act defines "invoice" as

> a written account, memorandum, list, or catalog, which is issued in connection with any commercial dealing in fur products or furs, and describes the particulars of any fur products or furs, transported or delivered to a purchaser, consignee, factor, bailee, correspondent, or agent, or any other person who is engaged in dealing commercially in fur products or furs.

Giving these words their ordinary and usual meanings, the ultimate consumer who purchases a fur product from a retail dealer is a "purchaser"; the sale to such a "purchaser" is a "commercial dealing"; and the sales invoice or memorandum issued in connection with such a transaction is an "invoice." Such

a construction is necessary to carry out the Congressional purpose, declared in the Act's title[4] and reflected in its legislative history (see *infra*, pp. 16–21), of "protect[ing] consumers and others against * * * false invoicing of fur products and furs" (65 Stat. 175). "[W]e deal here with remedial legislation whose language should be given hospitable scope" (*Black* v. *Magnolia Liquor Co.*, 355 U. S. 24, 26) "[i]n the light of the over-all purpose of the Act * * *" (*Flemming* v. *Florida Citrus Exchange*, No. 27, this Term, decided December 15, 1958, slip opinion, p. 10).

The Court of Appeals, however, ignored these considerations, and instead gave Section 2 (f) the "narrowest possible meaning in complete disregard of the purpose of the legislature" (*United States* v. *Brambletl*, 348 U. S. 503, 509–510). The court ruled (R. 70) that the last phrase in the definition—"who is engaged in dealing commercially in fur products or furs"—modifies not only the immediately preceding

[4] The title of a statute may be considered in construing it (*Maguire* v. *Commissioner*, 313 U. S. 1, 9–10; *Knowlton* v. *Moore*, 178 U. S. 41, 65; *White* v. *United States*, 191 U. S. 545, 550), especially where, as here, the title "seems to have been the subject of special consideration, for it truly discloses the general purpose of Congress in passing" the Act. *United States* v. *Union Pac. R. R.*, 91 U. S. 72, 82. The title of the original bills (H. R. 3734, S. 1388, 80th Cong., 1st sess.), "[t]o protect consumers [and others] * * * from misnaming, misbranding, improper identification, and deceptive or misleading advertising" of fur products, was changed in H. R. 3755 (81st Cong., 1st sess.) to its present title of a bill to "protect consumers and others against misbranding, false advertising, and false *invoicing* of fur products and furs" (emphasis added).

words "any other person," but also all the other preceding terms in the section, including "purchaser". It therefore held that to come within the statutory definition "an 'invoice' must be something issued in connection with a commercial dealing to a purchaser or any *other* person who is engaged in *dealing commercially*" (R. 70, emphasis in original); and that since a retail consumer is not engaged in commercial dealing "[a]n invoice is not brought down to the retail level by this section" (*ibid.*).

But it is a settled rule of statutory construction, with which the court below itself "agree[d]" (R. 71), that "a limiting clause is to be restrained to the last antecedent unless the subject matter requires a different construction."[8] Plainly, the subject matter of Section 2 (f) does not require "a different construction"; on the contrary, making the limiting clause applicable to the preceding terms of the definition would create a serious gap in the regulatory scheme (see *infra*, pp. 22, 26). The correct construction of Section 2 (f), we submit, is that Congress designated all the specific categories of persons to whom it intended the invoicing requirements to apply *i. e.*, purchasers, factors, bailees, etc., and then added a general catch-all of "any other person who is engaged in dealing commercially in fur products or furs."

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[8] *United States* v. *Hughes*, 116 F. 2d 613, 616 (C. A. 3); *Puget Sound Elec. Ry.* v. *Benson*, 253 Fed. 710 (C. A. 9); 2 Sutherland, *Statutory Construction*, 448-449 (3d ed., 1943).

B. The Legislative History of the Fur Products Labeling Act Reflects a Congressional Purpose to Protect Consumers from False and Deceptive Invoicing of Fur Products at the Retail Level

In point IA, we have shown that the language of the statutory prohibitions against false invoicing covers retail sales. But in any event, we submit that the court below plainly erred in holding (R. 71) that the definition of "invoice" is so "clear and unambiguous" as to preclude resort to legislative history. That history manifests a strong Congressional policy of protecting retail consumers of fur products from the dangers of false and deceptive invoicing.

The Fur Products Labeling Act became law during the 82nd Congress. However, during the 80th and 81st Congresses, a number of bills containing substantially the same provisions were introduced and extensively considered.* The hearings, reports and

*In the 80th Congress, the original bill (H. R. 3734, 80th Cong., 1st sess.) was, during the second session, favorably reported by the House Committee (H. Rep. 2004, 80th Cong., 2d sess.) with amendments (see H. R. 3734 (Union Calendar No. 979), 80th Cong., 2d sess.) after extensive hearings, but no further action was then taken. In the 81st Congress, two bills (H. R. 97 and 3755), both similar to H. R. 3734 in the preceding Congress (see Hearings on H. R. 4292, 97 and 3753 (House), 81st Cong., 1st sess., p. 38) were the basis of further hearings, after which the committee reported out (see H. Rep. 919, 81st Cong., 1st sess.) an amended bill (H. R. 5187, 81st Cong., 1st sess.) which passed the House (95 Cong. Rec. 9517). Although recommended by the Senate Committee (see S. Rep. 2378, 81st Cong., 2d sess.) after further hearings, this bill stood on the Senate calendar at adjournment. In the 82d Congress, two new bills (H. R. 2321 and S. 508), substantially identical with the bill passed by the House in the previous

debates on these earlier bills throw considerable light upon the objectives of the Act, and particularly its prohibitions against false and deceptive invoicing. The Committee Reports on the Act emphasize its substantial identity with the predecessor bills, and refer to legislative materials from the earlier Congresses. S. Rep. 78, 82nd Cong., 1st sess., p. 1; H. Rep. 546, 82nd Cong., 1st sess., p. 3.

As originally introduced in the 80th Congress, the bill (H. R. 3734, 80th Cong., 1st sess.) prohibited, *inter alia*, the sale "in commerce, of any fur article, or any imported fur, which is misbranded or falsely or deceptively advertised or invoiced" (Section 3 (a)), and prescribed limited circumstances under which "a fur article or imported fur shall be considered to be falsely or deceptively advertised or invoiced" (Section 6). It did not, however, define the term "invoice." At the committee hearings, industry spokesmen almost unanimously endorsed legislation requiring full disclosure on retail invoices as the simplest and most effective way to protect consumers

Congress (see H. Rep. 546, 82nd Cong., 1st sess., p. 3; S. Rep. 78, 82d Cong., 1st sess., p. 1), were introduced. H. R. 2321 passed the House (97 Cong. Rec. 6701) after hearings and a committee report (H. Rep. 546, *supra*); it passed the Senate with amendments (97 Cong. Rec. 6878) but without hearings. The bill then went to conference. After the Senate (97 Cong. Rec. 9004–9007) and the House (97 Cong. Rec. 9106) had accepted the conference report (H. Rep. 769, 82d Cong., 1st sess.), the President signed the Act on August 8, 1951 (97 Cong. Rec. 10,366) to take effect a year later (see 65 Stat. 181).

from deceptive practices.[7] In construing a statute, such testimony may properly be considered to show the evils which Congress intended to cure. *O'Hara* v. *Luckenbach S. S. Co.*, 269 U. S. 364, 367–369; see also, *Shapiro* v. *United States*, 335 U. S. 1, 11–15.

One witness urged that "[i]nvoicing * * * would be the best protection" for the unknowledgeable consumer against false and deceptive practices (Hearing on H. R. 3734, 80th Cong., 2d sess., p. 109), and that "[p]roper invoicing * * * would solve the problem in much the same manner" as labeling without the difficulty supposedly entailed by a labeling requirement (*id.*, p. 119). Other witnesses anticipated "a great possibility for benefit to the consumer in requiring a complete disclosure of the name and origin of the fur in the invoice" (*id.*, p. 157), and pointed out that invoices are already voluntarily issued to consumers "almost in every instance" (*id.*, p. 195, see p. 138) by the "vast majority", at least, of the reputable retail fur dealers (*id.*, pp. 120–121; see p. 161).

Another witness pointed to the consumer's need for an invoice because of the impermanency of the label in a fur garment. Such a tag or label, although attached to the garment, "may be shifted", and the purchaser "will disregard a tag just as we throw tags away which come on the clothes we buy" (*id.*, p. 120).

[7] Hearing on H. R. 3734 (House), 80th Cong., 2d sess., pp. 109, 119, 122–123 (Stein), 120–121 (Albach), 154, 156–157, 161 (Benedek), 168 (Weber). For similar testimony in succeeding Congresses, see Hearings on H. R. 4292, 97, and 3755 (House), 81st Cong., 1st sess., pp. 175–176 (Albach); and Hearings on H. R. 5187 (Senate), 81st Cong., 1st sess., pp. 73 (Majerus), 130 (Albach).

Because purchasers "are more likely to throw away a tag than a proper invoice", they "should get an invoice from their retailer representing what they have gotten in proper language and when that is done, you have the answer to your problem" of misrepresentation (*ibid.*).[8]

After these hearings, the committee reported back (see H. Rep. 2004, 80th Cong., 2d sess.) a version of the bill (H. R. 3734, Union Calendar No. 979) which expanded and strengthened the invoicing prohibitions,

[8] The value to the consumer of an invoice for a fur product is illustrated by one witness' "experience in the last few days":

> Mr. ALBACH [representing a large fur manufacturer]: * * * A lady came to us and said, "I have bought a Hollander dyed coat which somehow does not look like the coat that my friend bought."
>
> We asked her where she bought it and where her friend bought hers. She told us that her friend bought hers from Bambergers in Newark, one of our very fine stores. This lady had bought hers at a corner retailer somewhere in the outlying district.
>
> * * * * *
>
> We said to her, "Now, this is not a Hollander seal. However, you would have to prove that you bought a Hollander seal coat. Have you such proof?" She said, "Yes. I have a bill which was given to me by the retailer selling me a Hollander seal coat."
>
> We referred her to the Better Business Bureau and she was able to get her money back, because they had misrepresented it.
>
> Now, to me, that seems to be the complete answer. * * *
>
> * * * * *
>
> Mr. HESELTON [Congressman from Massachusetts]: That is a very interesting statement. It leads me at least to the feeling that you have now disclosed the very sort of thing that the bill is intended to reach and that is the unethical misrepresentation on the part of the few. * * *
>
> [House Hearing on H. R. 3734, 80th Cong., 2d sess., p. 120.]

giving them substantially their present form. In the amended bill, the present definition of "invoice" was added (*id.*, Section 2 (e)); the prohibitions against false and deceptive invoicing were extended to cover furs generally, as well as fur products (*id.*, Section 3 (b)); and the section detailing the circumstances when a fur product is falsely or deceptively invoiced was substantially expanded to its present scope (*id.*, Section 5 (b)). We submit that these changes in the bill, made after the unanimous testimony by industry representatives as to the consumers' need for legislation guaranteeing adequate retail invoices, reflect a Congressional purpose to proscribe invoicing violations at the retail level.[9]

This purpose is also shown by the Committee Reports in the 82nd Congress, which indicate a Congressional intent to give consumers broad protection against unfair and deceptive practices, including false invoicing (S. Rep. 78, 82d Cong., 1st sess., pp. 1, 3; H. Rep. 546, 82d Cong., 1st sess., pp. 1, 4).[10] And, as

[9] Although no further action was taken in the 80th Congress on this bill, similar bills were introduced in the 81st Congress (H. R. 97 and 3755, 1st sess.). At the hearings thereon, witnesses again pointed out that the invoice serves as "a permanent record of the true name [of the fur] to the consumer" of the fur product, and thus "affords the final complete protection as to any misnamings" (Hearings on H. R. 5187, 81st Cong., 1st sess., p. 73).

[10] The Committee Reports in the 80th and 81st Congresses also emphasized the need to protect consumers from false and deceptive practices, including misleading invoicing. H. Rep. 2004, 80th Cong., 2d sess., *passim*, especially pp. 1, 2; H. Rep. 919, 81st Cong., 1st sess., especially pp. 2, 3; S. Rep. 2378, 81st Cong., 2d sess., pp. 2, 3. See also, 95 Cong. Rec. 9513-9514 (statement of Rep. O'Hara in debate in House).

we have noted (*supra*, pp. 18–19), Congress previously had been informed of the need for an adequate retail invoice.

The Senate Report stated that one of the two purposes of the bill which became the Fur Act was "[t]o protect *consumers* and scrupulous merchants against deception and unfair competition resulting from the misbranding, false or deceptive advertising, or *false invoicing* of fur products and furs * * *" (S. Rep. 78, *supra*, p. 1, emphasis added). The report also stated that "fur when offered and sold to the buying public often has had its natural appearance materially changed by processing and dyeing", primarily "for the purpose of giving the article the appearance of being a fur of a higher quality or grade than it actually is, or for the purpose of imitating the more costly fur of an entirely different animal" (*id.* p. 2); that, as a consequence, it "is difficult and generally impossible for the American housewife to know what she is buying unless reliable factual information is disclosed to counteract the impression left with her as a result of the deceptive condition of the particular fur article of wearing apparel" (*ibid.*); and that the prohibitions contained in the Act "will effectively check types of advertising, *invoicing*, and labeling which by implication are calculated to mislead one as to the habitat of the animal, a matter regarded by many consumers as having considerable bearing on the quality and character of furs" (*id.*, p. 4, emphasis added).

The House Committee was also "unanimous in the belief that legislation is required to protect consumers of furs and fur products" (97 Cong. Rec. 6695). The Committee Report (H. Rep. 546, 82nd Cong., 1st sess.) pointed to the "widespread abuses arising out of the frequent practice in the fur trade of using, in advertisements and otherwise, in a false or misleading manner, foreign animal names and glamorous, fictitious designations for furs and fur products" (*id.*, p. 1), and concluded that "[t]his legislation will go far towards protecting consumers" (*id.*, p. 2), and fulfilling "the objective of this bill of promoting truthful advertising, *invoicing,* and labeling of furs and fur products * * *" (*id.*, p. 3, emphasis added).

In view of this clear Congressional design fully to protect consumers of furs and fur products, it would be anomalous for Congress to have made the advertising and mislabeling prohibitions applicable to retail transactions (as it did in Section 3, see *De Gorter* v. *Federal Trade Commission,* 244 F. 2d 270 (C.A. 9) and the decision below, R. 67-69), and yet to have denied retail customers the same protection against false invoicing—particularly since an invoice is such an important element in effectively protecting retail purchasers (see, *supra,* pp. 18–19; *infra,* pp. 26–27).

Nor is there "any substantial contrary indication in the legislative history" (*Flemming* v. *Florida Citrus Exchange,* No. 27, this Term, decided December 15, 1958, slip opinion, p. 13) that retail invoicing is ex-

empt from the Act's disclosure requirements. Contrary to respondent's suggestion (Br. in Opp. 7), the shorthand description of the Act in several of the Committee Reports as requiring "mandatory invoicing of furs and labeling of fur products" does not show any Congressional intent that "the desired protection for the consumer was to be achieved by requiring a label on the fur product" (Br. in Opp. 10). For, as we have shown (*supra*, pp. 16–22), the legislative history indicates that Congress was concerned with insuring that retail consumers would receive adequate invoices, and not just proper labels. Indeed, testimony presented to Congress emphasized that even proper labels would not adequately protect the consumer. (See *supra*, pp. 18–19, *infra*, pp. 26–27.)

Respondent's contention also flies in the face of the fact that most of the provisions of the Act dealing with invoicing apply to fur products as well as furs. For example, Sections 3 (a) and 3 (b) prohibit the sale "of any fur product which is * * * deceptively advertised or invoiced", and Section 5 (b) (15 U. S. C. 69c) sets forth the circumstances when "a fur product or fur shall be considered to be falsely or deceptively invoiced * * *." Furthermore, Section 2 (f) definies "invoice" as "a written account, memorandum * * * which is issued in connection with any commercial dealing in *fur products or furs*, and describes the particulars of any *fur product or furs*, transported or delivered to a purchaser, consignee, * * * or any other person who is engaged in dealing commercially in *fur products or furs*" (emphasis

added).[11] Thus, while the main thrust of the Act may have been against mislabeling of fur products, Congress also outlawed false and deceptive invoicing of such products, and not just of furs.[12]

C. The Settled Administrative Construction of the Act Is That Its Invoicing Provisions Apply to Retail Sales

As its opinion points out (R. 36), the Commission "has consistently construed the statute's proscriptions against false and deceptive invoicing to extend to invoices or sales slips furnished by retailers to the purchasing consumer." In "the first [complaint] issued under the Fur Products Labeling Act since it

[11] If, as respondent contends, the Act's invoicing provisions are applicable only to transactions involving furs, a retailer such as respondent would not be entitled to receive invoices covering its purchases of fur products from manufacturers. Yet obviously such invoices are issued in connection with a "commercial dealing in fur products," and respondent, as consignee, is a "person who is engaged in dealing commercially in fur products."

[12] Respondent also relies (Br. in Opp. 7–8) upon testimony by a Commission official (Henry Miller) at the House Hearings during the 80th Congress, that in his view "a good label * * * is a more effective remedy" than an invoice. But Miller was merely stating his personal opinion of the comparative merits of these two methods of protecting consumers; he did not state that invoicing was unnecessary. As we have shown, Congress found it unnecessary to choose between these methods, since it gave consumers the double protection of proper labeling and proper invoicing. Furthermore, since the effective date of the Act, the Commission (as distinguished from one of its officials) consistently has interpreted the Act's invoicing provisions as applicable to retail sales. See *infra*, pp. 24–25.

ecame effective in August 1952," the Commission harged a retailer with "[m]isrepresentation in the sale f fur products at retail," including a "failure to dis-lose on * * * invoices" the data required by the Act. 954 Annual Report of the Federal Trade Commis-ion, pp. 31–32, referring to *Ed Hamilton Furs, Inc.*, 1 F. T. C. 186, 188. Since then, the Commission as issued 137 additional complaints charging viola-ion of the Act involving false and deceptive retail nvoicing; 22 of these are currently pending before he agency. There are presently outstanding 110 ease-and-desist orders relating to retail invoicing.[13] Such a " 'contemporaneous construction of a statute by the men charged with the responsibility of setting ts machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new'" is "entitled to great weight." *United States* v. *American Trucking Ass'ns*, 310 U. S. 534, 549; *United States* v. *Zucca*, 351 U. S. 91, 96, and cases there cited. "In circumstances no more ambiguous than the present we have allowed contemporaneous administrative construction to carry the day against doubts that might exist from a reading

[13] In addition, the Commission has approved 92 stipulations under which furriers accused of false and deceptive retail invoicing (against whom no complaint has been filed, however) have agreed to discontinue such practices. See 1957 Annual Report of the Federal Trade Commission pp. 61–62, for a description of the Commission's stipulation practice.

Appendix B, *infra*, pp. 40–45, contains a list of Commission complaints and orders, and stipulations, relating to retail invoicing.

of the bare words of a statute." *Federal Housing Adm'n* v. *The Darlington, Inc.*, 358 U. S. 84, 90.[14]

The Commission's settled interpretation of the Act recognizes the importance of truthful invoicing at the retail level if ultimate consumers of fur products are to enjoy the full protection which Congress intended the Act to give them. Respondent's contention that the label itself adequately protects consumers (Br. in Op. 5–6), and that a retail invoice "would add no benefit for" them (*id.*, p. 10), overlooks the fact that fur product "labels" are not labels in the ordinary sense of pieces of cloth permanently sewn into the garments. These "labels" are merely "tags" or "tickets", apparently attached to the garments by tying, which the retail purchaser is "likely to throw away" after the purchase. See *supra*, pp. 5, 18–19. The invoice, on the other hand, constitutes the retail purchaser's permanent record, and, in all probability, will commonly be retained long after the "'label" has been lost or destroyed. The Commission, therefore, correctly stated (R. 37) that since "the invoice may serve as a documentary link connecting the sale of specific fur products back through the retailer's records with advertisements therefor, the application of the invoicing provisions of the Act to

[14] Respondent contends (Br. in Opp. 11–12) that this settled administrative construction is of "doubtful weight" because it is reflected in cases which were settled by consent. But a consistent agency interpretation is no less valid because the cases in which it was applied were settled by consent rather than by litigation. See *Black* v. *Magnolia Liquor Co.*, 355 U. S. 24, 26, reversing *Magnolia Liquor Co.* v. *Cooper*, 231 F. 2d 941, 946 (C. A. 5).

transactions between retailers and consumers represents a key implement for effective administration of the Act." "Courts are slow to disturb the settled administrative construction of a statute long and consistently adhered to" "where, as here, the declared will of the legislative body could not [otherwise] be carried out." *Alaska S. S. Co.* v. *United States*, 290, U. S. 256, 262.

II. THE COMMISSION, UPON FINDING THAT RESPONDENT HAD FAILED TO INCLUDE ON ITS LABELS THREE OF THE SIX CATEGORIES OF INFORMATION REQUIRED BY THE ACT, PROPERLY DIRECTED INCLUSION OF ALL SIX CATEGORIES

Section 3 of the Fur Products Labeling Act makes it unlawful to sell, advertise, etc., any fur product which is "misbranded." Section 4 provides that a fur product "shall be considered to be misbranded" (1) if it is falsely or deceptively labeled or identified, (2) if there is not affixed to it a label showing six specified categories of information, or (3) if the label sets forth the name of the animal that produced the fur other than as provided in the Commission's Fur Products Name Guide. The six categories of information required by subsection (2) are: (A) the name of the animal that produced the fur; where applicable, that the product (B) contains used fur, (C) contains bleached, dyed, or artificially colored fur, or (D) is composed of paws, tails, bellies, or waste fur; (E) the name of the manufacturer of the fur product, and (F) the country of origin of any imported furs.

The Commission found that respondent had committed a substantial number of violations of three of

the disclosure requirements in subsection (2),[15] but that there was "no evidence" that it had not complied with the other three requirements (see *supra*, pp. 5–6). The Commission rejected the examiner's recommendation that the order should be "limited to requiring cessation of the * * * deficiencies found" (R. 42), and ordered respondent to cease and desist from "Misbranding fur products by: 1. Failing to affix labels to fur products showing" each of the six categories of information required by subsection (2) (R. 29). The Court of Appeals, however, struck from the order the prohibitions with respect to the three categories as to which there was "no evidence" of violation, on the ground that it could not "affirm an order requiring one to cease and desist from doing that which the Commission specifically found it did not do" (R. 70).

We believe that this ruling, which in effect limits the Commission to proscribing the precise labeling violations which it finds, unduly and improperly restricts the agency's power to provide adequate relief against violations of the mislabeling and false invoicing provisions of the Fur Products Labeling Act.[16]

This Court has consistently recognized that the Commission has "wide discretion in its choice of a

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[15] The Commission also found that respondent had committed 187 violations of its rules governing labels (R. 12).

[16] In the case of the invoicing violations the Commission similarly prohibited respondent from failing to furnish invoices containing the six required categories of information, even though it found "no evidence" of violation with respect to three categories. See *supra*, note 3. The reasons which we give for sustaining the scope of the Commission's order against mislabeling are equally applicable to the false invoicing provisions and similarly justify its scope.

remedy deemed adequate to cope with the unlawful practices" disclosed in its proceedings. *Jacob Siegal Company* v. *Federal Trade Commission*, 327 U. S. 608, 611; *Federal Trade Commission* v. *Ruberoid Company*, 343 U. S. 470; cf. *Federal Trade Commission* v. *Morton Salt Company*, 334 U. S. 37, 51–52. The Commission is "not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past" (*Federal Trade Commission* v. *Ruberoid Company*, *supra*, at 473; see also *May Department Stores Company* v. *National Labor Relations Board*, 326 U. S. 376, 390 (footnote 10, subparagraph 3 (a)), but may restrain "other like or related unlawful acts" (*National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, 436), as long as such other violations "bear some resemblance to that which the * * * [respondent] has committed or * * * danger of their commission in the future is to be anticipated from the course of * * * conduct in the past" (*id.*, p. 437); *May Department Stores Company* v. *National Labor Relations Board*, *supra*, at 392.

We submit that the Commission did not abuse its "wide discretion in its choice of a remedy" in holding that the "appropriate" order to correct the statutory offense of misbranding by omitting required information from labels "is one requiring cessation of the practice, namely, the misbranding or false invoicing by failure to attach proper labels or to issue proper invoices" (R. 43–44). The Commission correctly pointed out (R. 42–43) that the labeling violations which the statute condemns "consist of the failure to attach to a fur garment an adequate label as there

prescribed," and "the offense of misbranding * * * occurs * * * by reason of failure * * * to include on a label * * * each of the items of information which the statute requires." The fact that Congress specified six categories of information which a label must contain in order to avoid misbranding does not mean that each of these categories is a separate offense for purposes of determining the permissible scope of a cease-and-desist order. As the Commission stated (R. 42–43), "[t]he subsections do not deal with separate violations in and of themselves, nor do they recognize or excuse misbranding or false invoicing in varying degrees." The offense is misbranding, and Congress has merely specified particular kinds of information which a label on a properly branded garment must contain.

Since, as the Commission stated (R. 43), the "requirements specified for an adequate label in subsection (2) of Section 4 are closely interrelated," it is not unreasonable to assume that one who repeatedly omitted several of the categories of information is likely, unless restrained, to commit violations involving others. For example, a retailer who frequently failed to disclose that fur is bleached or dyed, as respondent did (R. 12), may reasonably be expected also to fail to disclose that the product contains used or other undesirable types of fur." This is particularly so here

[17] Respondent argues that, "[i]n view of the varying degrees of reprehensibility of the several categories" of information required by Section 4 (2), "[t]he occurrence of violations which are almost technical in quality affords no basis for sound expectation that there will occur other violations of a definitely misleading nature" (Br. in Opp. 15). But, as the Commission noted (R. 43), the Act does not "recognize or excuse misbrand-

where, two years after the labeling violations were first uncovered by a Commission investigator (in September, 1952), a subsequent investigation (in October, 1954) disclosed further violations (R. 46–55). In the circumstances, a prohibition which also includes the three other labeling requirements cannot be said to have "no reasonable relation to the unlawful practices found to exist." *Siegel* case, *supra*, at 613. The Commission's broad discretion to select an appropriate remedy includes the power to proscribe "like or related unlawful acts." *Express Publishing* case, *supra*, at 436.

In *Local 167, Int'l Brotherhood of Teamsters* v. *United States*, 291 U. S. 293, a Sherman Act decree was attacked on the ground, *inter alia*, that although it enjoined the conspirators from coercing "marketmen to buy poultry, poultry feed, or other commodities necessary to the poultry business from particular sellers thereof", the evidence showed only coercion as

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ing or false invoicing in varying degrees"; violation of particular standards which Congress prescribed cannot be excused as merely "technical". In any event, respondent committed at least one "definitely misleading" violation when it failed, in 15 instances, to disclose that the fur product contained bleached, dyed or otherwise artificially colored fur (Section 4 (2) (C)). Precisely because fur "has had its natural appearance materially changed by processing and dyeing", primarily to "imitat[e] the more costly fur of an entirely different animal," it is "difficult and generally impossible for the American housewife to know what she is buying" without "reliable factual information" (S. Rep. 78, 82d Cong., 1st sess., p. 2). Similarly, respondent's 58 instances of failure properly to disclose the country of origin of imported furs (R. 12) cannot be deemed "technical," in view of the legislative history indicating the need for disclosure of the origin of imported furs (see House Hearings on H. R. 97 and 3755, 81st Cong., 1st sess., p. 44).

to chicken coops sold by a single company. Rejecti
a contention that the injunction should be simila
limited, this Court declared (p. 299) that

> The lack of specific evidence that coercion h
> been practiced or is threatened in respect
> every detail or commodity is no adequa
> ground for striking out the clause or for limi
> ing it to a mere specification of the coop
> Having been shown guilty of coercion in r
> spect of the coops in which poultry is kept a
> fed, appellants may not complain if the injun
> tion binds generally as to related commoditi
> including feed and the like.[18]

Similar reasoning supports the Commission's acti
in this case with respect to the "related" three cat
gories of information which respondent did not om
from its labels. Administrative agencies have th
"same power to determine the needed scope of cea
and desist orders" as courts have, when authorize
to issue injunctions, in other litigation". *May D*

[18] Cf. *International Salt Company* v. *United States*, 332 U.
392, 400; *Federal Trade Commission* v. *Ruberoid Company*, 3
U. S. 470, 473–474.

In judicial proceedings brought by the Commission for i
junctive relief against mislabeling under the similar provisio
of the Wool Products Labeling Act (15 U. S. C. 68, *et seq.*
the district courts have ordered that labels include all cat
gories of required information, even though the violatio
charged involved only failure to furnish some of the categorie
E. g., *Federal Trade Commission* v. *Martin Berdy*, S. D. N. Y
Civil Action 122–366, order of July 23, 1957; *Federal Trade Co*
mission v. *Kulin Waste Company*, D. Mass., Civil Action 5
707–W, order of August 1, 1957; *Federal Trade Commission*
South Village Mills, D. Mass., Civil Action 58–566–M, order
May 29, 1958; *Federal Trade Commission* v. *Fibre Enterprise*
Inc., S. D. N. Y., Civil Action 136–243, order of November 2
1958; *Federal Trade Commission* v. *Fairfield Wool Co.*, D. Conn
Civil Action 7422, order of November 24, 1958.

partment Stores Company v. *National Labor Relations Board, supra,* at 391–392."

The broad relief directed by the Commission in this case rests upon sound considerations of public policy, since it is designed to insure effective enforcement of the prohibitions in the Fur Products Labeling Act against deceptive practices in the fur industry. As the Commission pointed out (R. 44), if it were limited in prohibiting mislabeling (or false invoicing) to requiring disclosure only of the particular categories of information that had not been given, new proceedings would have to be instituted to deal with "sub-

[1] The instant case is significantly different from *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, upon which respondent relies (Br. in Opp. 16). There this Court held that the Board, upon finding that an employer had "refused to bargain as required by § 8 (5) of the Act," (p. 429), had erred in prohibiting not only such refusal to bargain, but also any interference with, or restraint or coercion of, its employees' rights to self-organization guaranteed by Section 7 of the Act—the denial of which rights was made an unfair labor practice by Section 8(1). The Court stated (p. 434) that the various unfair labor practices defined in the Act were "not always so similar or related that the commission of one necessarily merits or rightly admits of an order restraining all." In the instant case, however, the various subcategories of subsection (2) are so closely related that "the commission of" several "merits * * * an order restraining all." Furthermore, although the various unfair labor practices were separate statutory offenses, each of the subcategories of Section 4 (2) is not a separate offense; they are component elements of the single offense of misbranding. Finally, the provision of the order which was invalidated in *Express Publishing* was a broad ban which "in effect" directed the employer to "refrain from violating the Act in any manner whatever" (p. 430); in the instant case the provisions struck by the Court of Appeals were merely itemizations of particular subdivisions of the offense of misbranding.

sequent omission not theretofore resorted to bu similarly violative of the public policy expressed i the subsection." In order to avoid such "multiplicit of actions," the Commission, in administering the Fu Products Act, has followed its "long established policy" under the Wool Products Labeling Act (en acted in 1940) of including in its orders "prohibition against failure to disclose on labels all elements o information required by that subsection [Section (2) of the Wool Act, 15 U. S. C. 68b], even thoug failure to disclose some elements of information wer not involved in various of the cases" (*ibid.*). Such orders are a proper "prophylactic" and "preventiv measure taken in the interest of the general public" (Mr. Justice Brandeis, dissenting, in *Federal Trad Commission* v. *Gratz*, 253 U. S. 421, 432, 435).

CONCLUSION

The judgment of the Court of Appeals, in so far as it modified the Commission's order, should be reversed, and the case remanded with directions to affirm and enforce the entire order.

Respectfully submitted.

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JANUARY 1959.

APPENDIX A

The Fur Products Labeling Act, 65 Stat. 175, 15 U. S. C. 69, *et seq.*, provides in pertinent part as follows:

SECTION 2. As used in this Act—

* * * * *

(f) The term "invoice" means a written account, memorandum, list, or catalog, which is issued in connection with any commercial dealing in fur products or furs, and describes the particulars of any fur products or furs, transported or delivered to a purchaser, consignee, factor, bailee, correspondent, or agent, or any other person who is engaged in dealing commercially in fur products or furs. [15 U. S. C. 69 (f)]

SECTION 3.

(a) The introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product which is misbranded or falsely or deceptively advertised or invoiced, within the meaning of this Act or the rules and regulations prescribed under section 8 (b), is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act.

(b) The manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, and which is mis-

branded or falsely or deceptively advertised or invoiced, within the meaning of this Act or the rules and regulations prescribed under section 8 (b), is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act.

(c) The introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur which is falsely or deceptively advertised or falsely or deceptively invoiced, within the meaning of this Act or the rules and regulations prescribed under section 8 (b), is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act. [15 U. S. C. 69a]

* * * * *

SECTION 4.

For the purposes of this Act, a fur product shall be considered to be misbranded—

(1) if it is falsely or deceptively labeled or otherwise falsely or deceptively identified, or if the label contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product;

(2) if there is not affixed to the fur product a label showing in words and figures plainly legible—

(A) the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7 (c) of this Act;

(B) that the fur product contains or is composed of used fur, when such is the fact;

(C) that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(D) that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(E) the name, or other identification issued and registered by the Commission, of one or more of the persons who manufacture such fur product for introduction into commerce, introduce it into commerce, sell it in commerce, advertise or offer it for sale in commerce, or transport or distribute it in commerce;

(F) the name of the country of origin of any imported furs used in the fur produet;

(3) if the label required by paragraph (2) (A) of this section sets forth the name or names of any animal or animals other than the name or names provided for in such paragraph. [15 U. S. C. 69b]

SECTION 5.

(a) For the purposes of this Act, a fur product or fur shall be considered to be falsely or deceptively advertised if any advertisement, representation, public announcement, or notice which is intended to aid, promote, or assist directly or indirectly in the sale or offering for sale of such fur product or fur—

(1) does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7 (c) of this Act;

(2) does not show that the fur is used fur or that the fur product contains used fur, when such is the fact;

(3) does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur when such is the fact;

(4) does not show that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(5) contains the name or names of any animal or animals other than the name or names specified in paragraph (1) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur;

(6) does not show the name of the country of origin of any imported furs or those contained in a fur product.

(b) For the purposes of this Act, a fur product or fur shall be considered to be falsely or deceptively invoiced—

(1) if such fur product or fur is not invoiced to show—

(A) the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7 (c) of this Act;

(B) that the fur product contains or is composed of used fur, when such is the fact;

(C) that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(D) that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(E) the name and address of the person issuing such invoice;

(F) the name of the country of origin of any imported furs or those contained in a fur product;

(2) if such invoice contains the name or names of any animal or animals other than the name or names specified in paragraph (1) (A) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur. [15 U.S.C. 69c]

APPENDIX B

Complaints and Orders Issued by the Federal Trade Commission Under the Fur Products Labeling Act Involving Retail Invoicing (as of December 19, 1958)

Docket No.	Respondent	Order
6159	Ed Hamilton Furs, Inc.	Yes.
6296	Feuer Fur Co.	Yes.
6297	Pelta Furs	Yes.
6298	The Fur Doctor	Yes.
6299	Mac Goldman Co.	Yes.
6300	Einbenders	Yes.
6301	Parisian Fur Co.	Yes.
6337	Denning-Golden Furs, Inc.	Yes.
6371	H. J. Strauss Furs	Yes.
6429	Feller's, Inc.	Yes.
6433	S. A. Barker Co.	Yes.
6439	Evans Fur Co.	Yes.
6481	Gould's, Inc.	Yes.
6501	Benton Furs	Yes.
6503	LeAnn Fine Furs	Yes.
6509	Vancouver Fur Factory	Yes.
6513	Mawson DeMany Forbes	Yes.
6514	Buckspan's	Yes.
6530	N. L. Kaplan, Inc.	Yes.
6542	Beckman-Hammer Furs	Yes.
6558	I. J. Fox, Inc.	Yes.
6562	Roslyn Furs, Inc.	Yes.
6573	Saks Fur Co.	Invoicing charge dismissed.
6574	Beckerman Fur Corp.	Yes.
6588	Indiana Fur Co., Inc.	Yes.
6586	Stein Bros. Fur Co., Inc.	Yes.
6587	Fred Benioff Co.	Yes.
6629	International Fur Co.	Yes.
6631	Maurice Ball Furs	Yes.
6645	Furs by Kent	Yes.
6649	Phillip's Furs	Yes.
6657	Bernard Axelrod & Co.	Yes.
6659	Walker-Scott Co.	Yes.
6661	Meier & Frank Co.	Yes.
6663	Lipman, Wolfe & Co.	Yes.

Complaints and Orders Issued by the Federal Trade Commission Under the Fur Products Labeling Act Involving Retail Invoicing (as of December 19, 1958)—Continued

Docket No.	Respondent	Order
6664	Urist & Toplon	Yes.
6660	Frank Gould Fur Co	Yes.
6668	Koslows	Yes.
6680	S. C. Allen Furs Inc	Yes.
6683	Kaye-Ben Co., Inc	Yes.
6694	M. H. Peltz, Inc	Yes.
6715	Halote Bros	Yes.
6730	The House of Kudra Furs	Yes.
6731	Benard's Furs	Yes.
6739	Tolchinsky's Fur Shop	Yes.
6766	Philipson's	Yes.
6775	Siberian Fur Shop, Inc	Yes.
6777	Allen Waugh	Yes.
6778	The Halle Bros. Inc	Yes.
6781	I. Rubin, Inc	Yes.
6785	The Mayday Corp	Yes.
6786	Arctic Fur Co	Yes.
6805	Allied Stores of Ohio	Yes.
6813	International Co	Yes.
6819	Ellisberg's, Inc	Yes.
6822	The Fair	Dismissed.*
6825	Owens, Inc	Yes.
6828	Fettner Fur Co	Yes.
6834	The McAlpin Co	Yes.
6836	Federated Department Stores, Inc	Dismissed.*
6845	Nan Duskin, Inc	Yes.
6846	Furs by Koda, Inc	Yes.
6850	Teitelbaum Furs	Yes.
6851	Ransohoff's, Inc	Yes.
6862	A. Harris & Co	Yes.
6874	Samuel Glass	Yes.
6880	Annis Furs	Yes.
6881	Lester Conklin Furs	Yes.
6884	R. H. White Corp	Dismissed—store closed.
6895	Master Furriers, Inc. and Frank-Cunningham Stores Corp.	Yes.
6909	Henry C. Lytton & Co	Yes.
6917	Lurkin Furs, Inc	Yes.
6918	Master Furriers	Yes.
6921	Frank Gross Furs	Yes.
6930	Masonek & Bloom	Yes.

*Cited *Mandel* decision.

Complaints and Orders Issued by the Federal Trade Commission Under the Fur Products Labeling Act Involving Retail Invoicing (as of December 19, 1958)—Continued

Docket No.	Respondent	Order
6936	Jordan's, Inc	Yes.
6937	Dupler's Art Furs, Inc	Yes.
6946	Carl's	Yes.
6947	Consolidated Retail Stores, Inc	Dismissed—company reorganized.
6948	L. L. Berger, Inc	Yes.
6955	Blauner's	Pending.
6956	The Fashion	Yes.
6957	Nevius Bros	Yes.
6958	Freeman Fine Furs, Inc	Yes.
6959	Hartley Furs	Yes.
6960	H. Liebes & Co	Yes.
6970	Government Employees Exclusively	Yes.
6975	Kantrowitz & Neiditch Inc	Yes.
6976	Morton's, Inc	Pending.
6991	Goldrings Inc	Yes.
6992	Joske Bros. Co	Yes.
6993	Santa Ana Fur Co	Yes.
6998	Teitelbaum of Beverly Hills	Yes.
6999	Mercantile Stores Co., Inc	Yes.
7013	Greenhouse Furs, Inc	Yes.
7047	Gerschow Fur Co	Yes.
7055	E. L. Brownhill, Inc	Yes.
7062	Samuel A. Mannis	No proof found by Hearing Examiner.
7063	White Front Stores, Inc	Yes.
7064	Mannie Feigenbaum, Inc	Pending.
7071	Siegel's	Yes.
7084	The Higbee Co	Pending.
7088	H. Walzer & Co	Yes.
7093	Vaughan-Weil	Yes.
7098	Deluxe Fur Co	Yes.
7106	Arnold Constable Corp	Pending.
7108	Frank Gurak	Yes.
7111	Capitol Fur Shop	Yes.
7120	Fleisher's, Inc	Yes.
7124	World Arts Auction Gallery	Yes.
7153	Thomas & Noa Furs Inc	Yes.
7155	Ronay Furs Inc	Yes.
7157	Famous Furs Ltd	Yes.
7158	Baskin Furs Inc	Yes.
7159	Rich's Inc	Yes.
7161	Gittelman's Sons Inc	Yes.

Complaints and Orders Issued by the Federal Trade Commission Under the Fur Products Labeling Act Involving Retail Invoicing (as of December 19, 1958)—Continued

Docket No.	Respondent	Order
7172	D. H. Holmes Co., Ltd	Yes.
7173	H. P. Selman & Co., Inc	Yes.
7184	Associated Dry Goods Corp	Pending.
7185	Lloyd's Furs Inc	Yes.
7186	The John Bressmer Co	Yes.
7187	Furs by Weiss Inc	Pending.
7195	Hoving Corp	Pending.
7205	Smith Fur Co	Pending.
7206	B. Altman Co	Pending.
7200	Haber's Department Store, Inc	Pending.
7221	Miller Bros. Co., Inc	Yes.
7222	Teitelbaum Furs Ltd. of America	Pending.
7248	Canadian Fur Co	Pending.
7250	Felix Friedman	Pending.
7251	Furs by Gartenhaus	Pending.
7260	J. N. Adam & Co	Pending.
7263	Louis Pizitz Dry Goods Co. Inc	Pending.
7271	The Denver Dry Goods Co	Pending.
7291	Richard Donald Furriers Inc	Pending.
7295	Berdan Furs	Pending.
7299	Coleman's Fashion Shop	Pending.
7303	The Wurzburg Co	Pending.

Stipulations Approved by the Federal Trade Commission Involving Retail Invoicing of Fur Products (as of December 19, 1958)

Respondent	Stipulation No.
Grayson Apparel Company	8616
State Furriers	8635
Ritz Thrift Shop	8672
Miller Fur Company	8679
Jaskow Furs	8697
J. N. Adam & Company	8700
Owens, Inc	8711
Cummins Furs, Inc	8720
Marvin's Credit, Inc	8721
Cohen's Furs, Inc	8723
Consolidated Retail Stores, Inc	8725

Stipulations Approved by the Federal Trade Commission Involving Retail Invoicing of Fur Products (as of December 19, 1958)—Continued

Respondent	Stipulation No.
Rubin Fine Furs	8726
Lewin's	8732
L. L. Berger, Inc	8742
Jordan's, Inc	8743
Hopper Furs, Inc	8746
Chambers & Chambers, Inc	8747
Thomas & Noa Furs	8755
Arctic Fur Company	8757
Baskin Furs	8758
Maurice Kolinsky, Inc	8760
Stein's Furs, Inc	8761
Nina Wolff Furs	8763
Samuel Glass	8766
A. & J. Engel, Inc	8776
Stanley Furs, Inc	8779
Brown-Dunkin Company, Inc	8780
Yudofsky Furriers	8781
Franckowiak's, Inc	8788
C. E. Carlson Company	8792
Lustick Furriers	8795
Ralph H. Miller, Inc	8800
Berdan Furs, Inc	8803
J. Lichterman, Inc	8806
William Rosendorf	8809
Lowenthal's, Inc	8811
Seidenbach's, Inc	8812
Younger's	8822
David Gutter	8858
Sam Young	8860
Projansky, Inc	8862
Jorge's Furs, Inc	8863
Strawbridge & Clothier	8870
Moe Wolfe	8873
Ben Zuckerman, Inc	8875
Sorensen & Wahlberg	8882
Charles Barth & Son	8885
William Ackerman	8896
Grubman Brothers	8898
Sears, Roebuck & Company	8899
William A. Lewis Clothing Co	8901
Linenberg Brothers	8903
Oster Fur Exchange	8905

Stipulations Approved by the Federal Trade Commission Involving Retail Invoicing of Fur Products (as of December 19, 1958)—Continued

Respondent	Stipulation No.
Hudson Garment Company, Inc.	8914
All American Sportswear Company	8919
Carson Union May Stern, Inc.	8928
Gorman's, Inc.	8929
B. Gertz, Inc.	8933
Morris Gold, Inc.	8938
Hens & Kelly, Inc.	8942
Landsberg Brothers	8943
Block & Kuhl Company	8955
Sandler's Fur Shop	8956
Smith's Fur Shop	8958
Engel & Fetzer Company	8959
Buffum's	8960
S. Milenbach & Sons	8963
Reinstein-Berger, Inc.	8964
The Komiss Company	8974
Charles Main Street Corp.	8977
House of Erdrich	8985
Rizik Brothers, Inc.	8991
Baum Furs, Ltd.	9000
Stone & Thomas, Inc.	9002
Mirrow's	9007
Jacob Packer	9019
City Stores Company (Lit Bros.)	9029
Bankers Securities Corp. (Snellenberg)	9033
Erlebacher of Conn. Ave., Inc.	9040
Polonsky, Kane & Shuman	9041
Levin's Fur Shop	9043
Wayne Pepper Furs, Inc.	9046
Sydna Wynn	9048
Livingston Bros. Inc.	9052
Hafter-Pinsky	9053
The Paris Company	9065
Towncliffe, Inc.	9066
Jacob Klaff t/a Francine's	9077
Abrahams Brothers	9079
John Wanamaker Philadelphia, Inc.	9090
A. E. Tarlow & Company	9091
E. J. Korvette, Inc.	9097

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